2. Violation Of Statutory Condominium Warranties

a. Claim Against Contractor/Subcontractor

(1) [17.36] In General

The next issue for your consideration on the claims of (name of party) **against** (name of party) **is** (name of party)**'s claim that** (name of party) **violated certain warranties of fitness.**

Under Florida Law, a [contractor] [subcontractor] [supplier] involved in the construction of a condominium, here (name of party)**, gives the developer and the purchaser of each unit an implied warranty of fitness as to the work performed or materials supplied by [him] [her] [it].**

That the warranty is "implied," means that it exists by operation of law, and regardless of any intention of the [contractor] [subcontractor] [supplier] to create the warranty.

A warranty of "fitness" means that the item that was the subject of the warranty conforms with generally acceptable standards of workmanship and performance of similar work and materials meeting the requirements specified in the contractor's or subcontractor's contract.

The test for a breach of this warranty is whether the premises met ordinary, normal standards reasonably to be expected of living quarters of comparable kind and quality. If the unit meets these standards, then this warranty has not been breached. If the unit does not meet these standards, then the warranty has been breached.

The specific warranty of fitness given by the [contractor] [subcontractor], [supplier] (name of party)**, is as follows:**

- **For a period of 3 years from the date of completion for construction of a building or improvement, a warranty as to the roof and structural components of the building or improvement, and mechanical and plumbing elements serving a building or an improvement, except mechanical elements serving only one unit; and**

- **For a period of one year after completion of all construction, a warranty as to all other improvements and materials.**

For the purpose of this warranty, the term "completion of a building or improvement" means [the issuance of a certificate of occupancy, whether temporary

or otherwise, that allows for the occupancy or use of the entire building or improvement, or an equivalent authorization issued by the governmental body having jurisdiction] [or if no certificate of occupancy was issued, substantial completion of construction, finishing, and equipping of the building or improvement according to the plans and specifications. "Substantial completion" means completion of the building or improvement so that it can be occupied or used for its intended purposes].

For the purpose of this warranty a "supplier" is one who is engaged, directly or indirectly, in the business of making a product available to consumers.

(2) Defenses

(a) [§17.37] Remote Purchasers

The implied warranty of fitness extends only to initial purchasers of the units.

(b) [§17.38] Routine Maintenance

This warranty is conditioned upon routine maintenance being performed [unless the maintenance is an obligation of the developer or a developer-controlled association]. If routine maintenance of a warranted item is not performed, the warranty as to that item is released.

(3) [§17.39] Right Of Association To Bring Claim

The implied warranty extends to the unit owners individually, but the right to bring a claim for breach of the implied warranty may be exercised collectively, as to matters of common interest, through the condominium association.

Authorities: **F.S. 718.203, 672.314, 672.315; Fla.R.Civ.P. 1.221; Leisure Resorts, Inc. v. Frank J. Rooney, Inc., 654 So.2d 911 (Fla. 1995); Charley Toppino & Sons, Inc. v. Seawatch at Marathon Condominium Ass'n, Inc., 658 So.2d 922 (Fla. 1995); Port Marina Condominium Ass'n Inc., v. Roof Services, Inc., 119 So.3d 1288 (Fla. 4th DCA 2013); Stroshein v. Harbour Hall Inlet Club II Condominium Ass'n, Inc., 418 So.2d 473 (Fla. 4th DCA 1982); Parliament Towers Condominium v. Parliament House Realty, Inc., 377 So.2d 976 (Fla. 4th DCA 1979), disapproved on other grounds 620 So.2d 1244; Putnam v. Roudebush, 352 So.2d 908 (Fla. 2d DCA 1977); David v. B&J Holding Corp., 349 So.2d 676 (Fla. 3d DCA 1977).**

COMMENT: No instruction defining "common interest" is suggested because those issues would typically be resolved as a matter of law before trial.